

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BEARBOX LLC and AUSTIN
STORMS,

Plaintiffs,

v.

LANCIUM LLC,
MICHAEL T. MCNAMARA, and
RAYMOND E. CLINE, JR.,

Defendants.

C.A. No. 21-534-GBW-CJB

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

As subsequent authority in support of their Opposition to Defendants' Motion for Fees and Expenses (D.I. 269), and pursuant to Civil Local Rule 7.1.2(b), Plaintiffs BearBox LLC and Austin Storms submit the attached precedential opinion from *OneSubsea IP UK Ltd. v. FMC Tech., Inc.*, Case No. 2022-1099 (Fed. Cir. May 23, 2023) (Ex. A). In *OneSubsea*, the Federal Circuit affirmed a denial of fees even though the district court had *granted* summary judgment against the plaintiff and excluded plaintiff's expert's opinion for misapplication of a construed claim term. Because the district court had previously declined to grant summary judgment, the Federal Circuit observed:

When a district court, fully aware of the competing contentions of the parties, declines to end the case on summary judgment and allows a plaintiff's case to proceed, the district court may have effectively

determined that the position of the party opposing summary judgment is not objectively baseless, making it nearly impossible for the plaintiff's case (on the issue that was the subject of the summary judgment motion) to "stand out" as lacking substance at that time.

Id. at 19-20.

ASHBY & GEDDES

/s/ Andrew C. Mayo

Andrew C. Mayo (#5207)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
(302) 654-1888
amayo@ashbygeddes.com

Of Counsel:

Benjamin T. Horton
John R. Labbé
Raymond R. Ricordati, III
Chelsea M. Murray
John J. Lucas
MARSHALL, GERSTEIN & BORUN
LLP
233 South Wacker Drive
6300 Willis Tower
Chicago, IL 60606-6357
(312) 474-6300

*Attorneys for Plaintiffs
BearBox LLC and Austin Storms*

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